United Nations S/2014/75

Security Council

Distr.: General
3 February 2014

Original: English

Letter dated 3 February 2014 from the Permanent Representative of Lithuania to the United Nations addressed to the Secretary-General

I have the honour to inform you that, under the presidency of Lithuania, the Security Council is scheduled to hold an open debate on the promotion and strengthening of the rule of law in the maintenance of international peace and security. The debate will be held on Wednesday, 19 February 2014. In order to help steer the discussion on the subject, Lithuania has prepared a concept note (see annex).

I should be grateful if the present letter and the annex thereto could be circulated as a document of the Security Council.

(*Signed*) Raimonda **Murmokaitė**
Ambassador
Permanent Representative

14-22400 (E) 100214

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Annex to the letter dated 3 February 2014 from the Permanent Representative of Lithuania to the United Nations addressed to the Secretary-General

The promotion and strengthening of the rule of law in the maintenance of international peace and security

Concept note

Background

Many countries that have experienced conflicts in the past face repeated cycles of violence, displacement, pervasive humanitarian crises and instability. Weak rule of law institutions lead to diminishing levels of citizen security and economic opportunity and often become a substantial contributing factor to a conflict and/or impediment to its sustainable resolution. Building responsive rule of law institutions is therefore an effective means of breaking those negative cycles. Such institutions anchor sustainable peace by ensuring accountability and managing disputes within pacific processes, restoring trust and social cohesion on the basis of equal rights, and building confidence in the ability of a country to deliver justice to all without discrimination. As such, assisting the efforts of host countries to strengthen their rule of law institutions is an important element of the peacekeeping and peacebuilding work of the United Nations.

Developments

The Security Council has already identified the strengthening of rule of law institutions as a key part of the mandates it designates for the maintenance of international peace and security. Such support is currently included in the mandates of 18 out of 28 Security Council missions and takes on different forms and contexts, including rebuilding police and law enforcement services, for example in the United Nations Multidimensional Integrated Stabilization Mission in Mali, the United Nations Stabilization Mission in Haiti (MINUSTAH), the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), the United Nations Mission in Liberia (UNMIL) and the United Nations Operation in Côte d'Ivoire (UNOCI); ensuring humane and secure prison facilities and deployment of nations' mobile court systems (UNOCI); fighting impunity, particularly through the establishment of transitional justice systems (United Nations Office in Burundi); strengthening legal frameworks by drafting new criminal and criminal procedure codes and legislation on money-laundering and terrorism (MINUSTAH); reforming areas of civil and administrative law that directly affect key drivers of conflict, including property and land disputes (African Union-United Nations Hybrid Operation in Darfur) and the administration of natural resources (UNMIL); addressing sexual violence in conflicts (MONUSCO); and combating corruption (United Nations Support Mission in Libya).

Linkages between the rule of law and the maintenance of peace and security have been further highlighted in numerous thematic documents. Notably, in the presidential statement of 19 January 2012 (S/PRST/2012/1) adopted at the most recent Security Council thematic debate on the rule of law, the Council emphasized "the importance of the rule of law as one of the key elements of conflict prevention, peacekeeping, conflict resolution and peacebuilding". Similarly, in the Declaration

of the high-level meeting of the General Assembly on the rule of law at the national and international levels (General Assembly resolution 67/1), Heads of State and Government stressed that "justice, including transitional justice, is a fundamental building block of sustainable peace in countries in conflict and post-conflict situations" and "the importance of supporting national civilian capacity development and institution-building in the aftermath of conflict, including through peacekeeping operations in accordance with their mandates, with a view to delivering more effective civilian capacities".

Not less importantly, the recognition of the role of rule of law support in post-conflict stabilization was followed by an increased emphasis on the need to ensure greater system-wide coordination and coherence, in order to improve its delivery. While addressing that demand, the Secretary-General undertook to realign the institutional response of the United Nations to the challenges it faces. A "Delivering as one" model was prioritized by specifically tasking the most senior in-country United Nations official to be accountable for guiding and overseeing rule of law strategies, for supporting their implementation by resolving political obstacles and for coordinating United Nations country support. To assist those officials with the new responsibilities, the Department of Peacekeeping Operations and the United Nations Development Programme have been made jointly responsible for establishing a global focal point for the police, justice and corrections areas of the rule of law in post-conflict and other crisis situations. The global focal point is designed as a "hub" through which field leaders can access support, in terms of people, knowledge, funding and technical and operational advice, to establish and implement rule of law strategies.

As part of the same objective, the Secretary-General, in his report on measuring the effectiveness of the support provided by the United Nations system for the promotion of the rule of law in conflict and post-conflict situations (S/2013/341), examined ways to measure the impact of the United Nations. The Security Council and the States Members of the United Nations have not yet had an opportunity to discuss the report.

Challenges and opportunities to be explored

The Lithuanian presidency believes that the time is opportune to follow up on these developments and consider further practical approaches that could help to improve the overall impact of rule of law mandates in preventing the recurrence of conflicts and building sustainable peace.

Accordingly, the Lithuanian presidency proposes that the debate focus on how rule of law mandates can be made more effective by identifying and sequencing the most appropriate activities to strengthen the rule of law and ensuring that foundations are laid for the continuity of rule of law support beyond those mandates. The debate could review key findings of the above-mentioned report of the Secretary-General and look into other tools that may assist the Security Council in responding to future requests for assistance in strengthening the rule of law. In particular, the participants might wish to consider one or several of the elements below.

Design of mandates: clarity, credibility and achievability

Rule of law mandates are often worded in an open-ended or thematic manner, while some are made conditional upon the realizations of other political goals or contain practical guidance and even suggestions on specific institutional design. The degree of specificity of rule of law mandates, however, does not appear to be directly linked to the importance placed upon the issue in the particular country setting. Focusing on the most appropriate rule of law activities and authorizing operations or missions to fully and visibly engage on them might be essential to increasing their effectiveness. That would include activities that support host-country authorities to directly address the root causes of conflict, advance the peace process and enhance stability in the post-conflict environment. At the same time, even with clear and targeted rule of law mandates, their implementation ultimately remains a concrete exercise at the field level and must be refined to local circumstances.

An additional challenge in the delivery of justice and security services is that, generally, they are an outcome of a system composed of numerous actors, institutions and processes that must all perform their specific roles and work together with other links in the justice chain. Often, in the peacekeeping setting, police reforms outpace justice and corrections reforms, undermining the overall investment in the entire sector. A holistic approach could therefore help to balance support to each institution, enable national authorities to lead sectoral reform and coordinate international support to national priorities.

Questions to consider: How could United Nations support to the rule of law be strengthened by designing clear and credible mandates (indicating their importance in all relevant Security Council resolutions; mandating the use of particular rule of law activities and support to particular areas; developing a specific list of potential rule of law activities that could be referred to when designing mandates)? How could such mandates support the strengthened role of senior United Nations in-country leadership in coordinating and overseeing rule of law activities (the importance of robust implementation of rule of law mandates and its establishment as a core priority in mission planning; making use of their comparative advantages in line with national priorities)? How to ensure that rule of law support is provided in a holistic manner and to all relevant institutions (through sector-wide approaches; specifying, where appropriate, the ceiling number of uniformed Government-provided officers)?

Managing transitions: timing, sequencing and continuity of support

Targeted efforts to address key rule of law gaps that underpin a conflict must begin early, in the immediate aftermath of a conflict. Some activities, such as supporting the re-establishment of rule of law institutions, redeploying personnel, supporting mobile courts, improving basic infrastructure and some key legislation and providing mentoring, training and capacity-building, need to start early before poor practices become entrenched. Similarly, addressing systemic human rights violations may require immediate efforts to protect vulnerable communities. At the same time, addressing the broader issues that underpin a conflict and supporting deeper rule of law reforms often requires sustained long-term engagement. Consequently, fulfilling rule of law mandates requires the correct sequencing of both activities and priorities.

Moreover, in most countries in which they operate, peacekeeping operations play a central role in supporting the provision of justice and security services. Such operations are the largest multilateral provider of experts in the police, justice and corrections areas. Accordingly, operation withdrawal or downsizing can result in gaps in the delivery of essential services. To safeguard peacekeeping and peacebuilding gains, there is a need for peacekeeping operations, as well as other United Nations entities, regional organizations and bilateral partners to work with host-country authorities and to carefully plan for the transfer of tasks.

Questions to consider: How should the issue of the timing and sequencing of rule of law support activities be addressed (long-term commitment; the need to put in place comprehensive implementation plans from the inception of peacekeeping operations/special political missions)? How could peacekeeping operations/special political missions be better evaluated on their treatment of the rule of law (relevant monitoring and evaluation mechanisms; links between withdrawal or downsizing and progress made in the area of the rule of law)? How to ensure that the transition management process is based upon the actual capacities and funded initiatives of longer-term peacebuilding and development actors, so that they can assume key tasks previously undertaken by peacekeeping operations/special political missions (United Nations peacebuilding machinery; donor support to those initiatives well in advance of a transition)?

Other prerequisites for success: national ownership, political engagement, coordination, and alignment of efforts and resources

In order to be effective, efforts to strengthen the rule of law should be nationally owned, led and implemented and tailored to the culture and traditions of the host country. This might also require effective broad-scale consultations with all relevant national actors and public involvement, which could increase the likelihood of the initiatives being appropriate and sustainable.

Often, to drive real changes on the ground, strengthening rule of law institutions also requires both technical expertise and engagement in the broader political reform process. Senior mission leadership, other concerned actors and the Security Council itself have a substantial role to play in leveraging political commitment to reform, where such commitment is lacking.

Regional organizations, bilateral actors and United Nations entities can actively support peacekeeping operations and special political missions to implement the rule of law aspects of their mandates. Effective coordination among them helps, inter alia, to avoid a situation where relatively simple or low-cost interventions, so-called "quick wins", are duplicated, while crucial yet more complicated or costly institutional strengthening needs go unaddressed.

Addressing needs in the area of the rule of law also requires sustainable and predictable resources, in terms of both expertise and programmatic support. It is thus critical that operations and missions have at their disposal the support and resources required to fulfil their rule of law mandates. In this regard, it remains a particular challenge to quickly identify experts, in particular from developing countries, who have the necessary skill sets, are trained to United Nations standards and are ready to be deployed to operations.

Questions to consider: How could mandates support host-country aspirations to strengthen rule of law institutions (development of rule of law compacts with host-country populations and the international community)? How could the Security Council increase its political engagement with host countries (country-specific debates, briefings by key host-country stakeholders; visits to prisons, courts and law enforcement facilities when visiting host countries)? How could coordination between United Nations and non-United Nations international assistance providers be strengthened (nationally led or United Nations-facilitated coordination forums; the use of multi-partner trust funds and other similar financing mechanism)? What can be done to ensure better alignment of efforts and resources (adequate access of resources for rule of law programming; development of rosters of experts in a range of rule of law specialty areas)?

Format and outcome

The Secretary-General is expected to present a briefing at a meeting to be held on Wednesday, 19 February 2014, chaired by the Minister for Foreign Affairs of the Republic of Lithuania, that will be open to the participation of non-Security Council members.

The Lithuanian presidency will propose a presidential statement for adoption.